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Anthony Parker Appellant.

Humphry Burroughs
and
George Reynolds } Respondents.

The Respondents Case.

HESTER MOORE, the Widow of one *Thomas Moore*, and afterwards ^{22 June 1688.} the Appellant's Wife, by Agreement between her and the Appellant made in writing, and duly executed by all Partys before the Marriage between her and the Appellant, did assign in Trust for her separate Use, and reserve to her self the Power of disposing of her Estate at her Death, except such part thereof as was thereby agreed to be settled upon the Appellant (which was very considerable) and thereupon the Marriage was had. And the Appellant afterwards using her very barbarously, several Suits were begun between him and his said Wife, and her Trustees. But at length they came to a second Agreement, by another Indenture then dated, and duly executed by the Appellant, reciting the said first Agreement, in consideration of 800 l. more of the said *Hester's* Estate paid to the said Appellant, beyond what before had been settled upon him. ^{31 July 1691.} It was agreed between the Appellant and the said *Hester*, and her Trustees, That her Personal Estate therein mentioned should be, and was thereby assigned over in Trust, for such Purposes only as she (whether Sole, or under Coverture) should by any Writing under her Hand and Seal, or her last Will and Testament in writing, or any Writing purporting her last Will, testified by two or more Witnesses, direct and appoint: And for want of such Direction and Appointment, to the Executors and Administrators of the said *Hester*, *Exclusive always to the said Anthony Parker the Appellant; and so as that he, his Executors and Administrators, might have no Controul, Disposition or Power of, or over the same, or any part thereof.*

The said *Hester* (having a just aversion to the Appellant, by reason of the continuance of his barbarous Usage towards her, and having lived separate from him for a considerable time) did, pursuant to such her Power (when she was of sound Mind) duly sign and publish her last Will in writing (prepared ^{6 Octob. 1699.} according to her Instructions by Mr. *Prime* an Attorney, of known Credit) in the presence of three credible Witnesses; whereby she disposed of part of her Estate, and made the Respondents Executors, as she had made the Respondent *Burroughs* in other Wills before drawn by the said Mr. *Prime*.

The said *Hester* dying, and the Respondents having duly proved the said Will, the Appellant questioned the same in the Consistory Court of *London*. And Dr. *Titus Oates* having been turned out from being Preacher in a Congregation of Anabaptists, and conceiving a Prejudice against the Respondents, as instrumental to his being so turned out; he zealously solicited the said Cause against the Respondents, and by his management a Sentence was obtained against the said Will; from which Sentence the Respondents appealed to the Court of the Arches. After which the said Dr. *Oates* contriving how to be further revenged on the Respondents, and to draw them into his Power, declared (after the said Sentence was past) that he was however satisfied of the Justness of the Respondents Cause, from that Clause in the second Agreement, whereby the Appellant had debarred himself from having any thing to do with his Wife's Estate, which the Doctor declared *stuck so with him, that he could not get over it*, often calling it the 5 s. Clause for distinction; and if he had seen the Settlement before, he would never have stirred one step for the Appellant; and also declared he was satisfied of the *Validity of the said Will*, and that the Instructions given to the

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Attorney

Attorney that drew it, were in his Judgment a very good Will ; and pressed the Respondents Friends to persuade the Respondents to refer the Matters to him, declaring to them that otherwise they would spend the Estate, and neither of them be the better for it ; *but that damn'd Crew of Rogues in the Commons* (as he called them) *would get all, and that it grieved him to see such an effusion of Christian Mony in such an Antichristian Court as that was :* and many more insinuating Expressions were used to prevail with the Respondents, to refer the said Matters to him. Which was at length agreed to, but on exprefs Condition and Agreement, and so accepted by Dr. Oates : That one Mr. Porter an Attorney at Law, the Appellant's Agent, and one Mr. Lovell the Appellant's Proctor, and one Mr. Jeffreys, should not be present, for that if they left the Law, they would not be concerned with Lawyers.

26 Dec.
1700.

The Respondents being by the said Contrivances drawn into a Bond of 4000 l. Penalty, to stand to the Award of the said Dr. Oates, several Attendances were had at the said Dr. Oates's House ; where (to the Respondents great surprize, and contrary to the Agreement and Condition of the Arbitration) the said Porter, Lovell, and Jeffreys, were all present, and rudely behaved themselves against the Respondents and their Witnesses ; and in so doing, were abetted and encouraged by the said Doctor ; and the Doctor himself not only refused to hear the Respondents Witnesses, but palliated the manifest Contradictions of the Appellants Witnesses, and at length, (in vengeance to the Respondents, and from the malice of his Mind, very freely and indecently confessed, as will appear by several Proofs in the Cause, and not from any just Grounds) made and published his Award under his Hand and Seal, whereby he not only confirmed the said Sentence given against the said Will, but among other things awarded the Respondents to pay 1500 l. to the Appellant at his the said Dr. Oates his own House, tho no part of the said Hester's Estate ever came into the hands of the Respondent Reynolds, and but very little to the Respondent Burroughs, according to the Inventory on the Respondents Oath ; nor was there the least proof to surcharge the Respondents, to the utter ruin of the Respondents and their Familys.

To be relieved against which Award, the Respondents exhibited their Bill in Chancery, and the Appellant exhibited a cross Bill, which were both answered.

That to justify the said extravagant Award, the Doctor has sworn in his Answer in Chancery, that the said Hester, a fortnight before she died, acquainted him, that she had above 2000 l. in the Respondent Burroughs his hands, and shewed him two several Bonds, which he affirmed to be under the Respondent Burroughs's Hand and Seal, and the said Respondent's Name thereto he believes to be of his Hand-writing ; one of which Bonds was for 1500 l. and the other for 500 l. But no such Matter was pretended to, or insisted upon by him at the time of the Reference, nor ever discovered or heard of till the said Answer in Chancery ; so that the said Respondent could have no opportunity to make any Defence to the same. And it's prov'd in the Cause, that she the said Hester swore, about two Years before her Death, before the Commissioners, upon an Appeal for being assessed too much for her Personal Estate, that she was not worth above 300 l. and it's proved that she had but a small Estate, and borrowed Mony to answer her Occasions, and sold part of her Plate to pay Taxes, as she declared.

That the Respondents being greatly surprized at the Extravagancy of the said Award, and discoursing about the Reason of it, they were at length informed, as it is fully proved, that the said Dr. Oates was angry with the Respondents, because they had, besides the Matters before mentioned, neglected to invite him and his Wife to the said Hester's Funeral, and was also by them prevented preaching her Funeral Sermon ; and he had declared, as is fully proved, *That he cared not which of the Parties got the Cause, so the Respondent Burroughs was ruined ; and said, God had put a Rod into his hands, wherewith he would scourge Burroughs. And further said, viz. I will swinge him, and when I have wore it to the Stump I will lay it by ; and said, the Respondent Burroughs was a Rogue, and before he had done with him he would ruin him, and make him fly his Country, and not leave him worth a Shilling ; and said, Do you think that Weaver's Boy (meaning the Respondent Burroughs) shall knock Heads with me, who have been a Doctor of Divinity above these twenty Years ?* And being told

told he ought not to seek for Revenge, but leave it to God; *Oates* replied, *God was many times long before he did it; and that when the Jews refused St. Paul, he turned to the Gentiles.* To which he being told, that tho *St. Paul* did turn to the *Gentiles*, he did not wage War with the *Jews*: *Oates* replied, *That tho Paul's Teeth were grown, his Nails were not*; with many more indecent threatening words against the Respondents, as is fully proved by several Witnesses.

That upon Discourse with the said *Dr. Oates* about the Respondents in Decemb. 1700. the said *Oates* declared, as is also proved, that the Respondents deserved to lose the Cause, because they brought it into that *curst Babylonish Court of Doctors Commons*, which said he is nothing but *a damned Relict of Popery among us.* And in discourse about the Extravagancy of the said Award (after the same was published) and about the reconciliation of the Difference that had been between the said *Oates* and the Respondents, and his going to the same Meeting or Congregation with the Respondents; the said *Oates* answered, *That as to any Reconciliation, there never was any between them; and that tho he went to the Meeting with the Respondent Burroughs, he had an end or design in that, and that he believed he had done Burroughs his business.*

That upon hearing the Respondents said Cause before the Right Honourable the Lord Keeper of the Great Seal of England; and upon reading the said several Deeds, and the Conviction of Perjury of the said *Dr. Oates*, and the Proofs taken in the Cause, the Court declared, That neither the Reference, nor the said Award, were fairly or indifferently obtained; and that the same Award appeared to be made revengefully and partially; and did therefore order and decree, That the said Award be set aside, as unjustly and unduly made and obtained; and that the Award Bond entred into by the Respondents to the Appellant, be delivered up to be cancelled; and that the Appellant do acknowledg Satisfaction on the Record of the * Judgment obtained thereupon; and that the Security formerly given by the Respondents to the Sheriffs of London and Middlesex, upon the *Ne exeat Regnum* sued out against them, be vacated and discharged.

17 Nov.
1702.

*This Judgment was given by Order of the Court of Chancery (on granting an Injunction) as a Security for the Appellant.

Which Decree the Respondents humbly hope will appear to your Lordships to be just and reasonable, and that the same will be affirmed by your Lordships, *and the rather*, for that the Appellant hath the Sentence with him, if it can be supported, in the Ecclesiastical Court; But if the said Award should stand, the Respondents have no Remedy at Law, or elsewhere, *but must be utterly ruined.*

Tho. Powis.
William Cooper.

The CASE of

*Humphrey Burroughs and
George Reynolds
Respondents;*

Upon the Appeal of

Anthony Parker Appellant.

Touching an Award made
by Dr. Oates, and set a-
fide in Chancery.

To be heard the 22 of Jan. 1702.